APPELLANT PRO SE:

KENNETH D. IVY
Michigan City, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

FRANCES H. BARROW
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KENNETH D. IVY,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 79A02-0701-CV-77
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0105-CP-287

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Kenneth D. Ivy (Ivy), appeals the trial court's Order of Forfeiture of Property.

We affirm.

ISSUES

Ivy raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the State presented sufficient evidence to support the trial court's Order of Forfeiture of Property.

FACTS AND PROCEDURAL HISTORY

To begin, we borrow facts from this court's previous Opinion, *Ivy v. State*, 847 N.E.2d 963, 964-65 (Ind. Ct. App. 2006):

> On December 30, 2000, Ivy was a backseat passenger in a vehicle that instigated a hit and run accident in Lafayette[, Ind.]. In the investigation of the accident, the police spoke with Ivy. He stated that his name was Markis Ivy . . . [but] one of the officers recognized Ivy from a previous arrest and identified him as Kenneth Ivy . . . . The police then arrested Ivy for false informing. During his arrest, the police searched Ivy and discovered $2,800 in his pocket, which the police confiscated. The police also recovered a shoebox, which contained a set of scales.
>
> In an entirely separate incident on February 14, 2001, the police arrested Ivy on numerous drug charges, including dealing in cocaine and conspiracy to commit dealing in cocaine. Ivy was subsequently convicted of these charges. On October 11, 2002, the trial court dismissed the false informing charge[] stemming from the December 30, 2000, incident at the State's request.
>
> On May 24, 2001, the State filed a complaint for forfeiture against Ivy for the forfeiture of his property seized during the false informing arrest, including the $2,800. On November 21, 2002, the criminal court in Ivy's false informing case conditionally granted Ivy's petition to return the property. On December 20, 2002, the State filed an objection to the grant

> of Ivy's petition because the criminal court lacked jurisdiction over the disposition of Ivy's property. On January 7, 2003, the criminal court denied Ivy's motion for return of his property, citing its own lack of jurisdiction.
>
> On November 15, 2004, Ivy filed a motion for dismissal of the forfeiture action and for the return of his property with the forfeiture court. On January 19, 2005, the State filed its motion for summary judgment, alleging that the money had been seized from Ivy [in connection with the cocaine charges filed against him]. On February 3, 2005, the trial court held a hearing, and on February 8, 2005, the trial court denied Ivy's motion. But the trial court did not enter an order granting the State's motion for summary judgment until March 22, 2005. Meanwhile, Ivy filed his notice of appeal on February 22, 2005.[1]

On appeal, we concluded that the property at issue was money confiscated during Ivy's arrest for false informing, not his unrelated arrest for dealing in cocaine. *Ivy*, 847 N.E.2d at 966. While the State told the forfeiture court that a shoebox smelling of marijuana and containing scales was found in the vehicle Ivy was in prior to his arrest, no witnesses were sworn and no exhibits were introduced to substantiate this allegation. *Id*. at 967. Consequently, we determined that there was no evidence to connect Ivy's money to drug dealing and that the trial court improperly granted summary judgment in the State's favor. *Id*. Therefore, we reversed and remanded for trial. *Id*.

On October 13, 2006, the trial court conducted an evidentiary hearing on Ivy's motion to dismiss the forfeiture claim. On October 30, 2006, the trial court denied Ivy's motion, finding "by a preponderance of the evidence that [Ivy] conceded the forfeiture in part – related to the [cocaine] charges . . . and that with respect to the balance of the money seized, the State proved by a preponderance of the evidence that [Ivy] had been

[1] On appeal, we determined that Ivy's premature filing of the notice of appeal was "simply a procedural defect capable of being cured" because the substantial rights of neither party were adversely affected. *Ivy*, 847 N.E.2d at 965.

engaged in trafficking narcotics on the date in question, [December 30, 2000], and that the State was entitled to forfeiture of the total amount of [$3,718] . . . ." (Appellant's Brief pp. 15-16).

Ivy now appeals once again. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Ivy argues that the evidence was insufficient to support the trial court's Order of Forfeiture. Specifically, Ivy contends that the evidence fails to connect the money confiscated during his December 2000 arrest to drug dealing.

For a trial court to properly order property forfeited, the State "must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section one of this chapter." Ind. Code § 34-24-1-4(a); *$100 v. State*, 822 N.E.2d 1001, 1006 (Ind. Ct. App. 2005), *trans. denied*. Because forfeiture cases are civil in nature, we use the standard of review employed in other civil cases where an appellant questions the sufficiency of the evidence to support a verdict. *$100*, 822 N.E.2d at 1006. We consider only the evidence most favorable to the judgment and any reasonable inferences that may be drawn therefrom. *Id*. We may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id*. "Only if there is a lack of evidence or evidence from which a reasonable inference can be drawn on an essential element of the plaintiff's claim will we reverse a trial court." *Id*. (quoting *Jennings v. State*, 553 N.E.2d 191, 192 (Ind. Ct. App. 1990), *reh'g denied*).

Under I.C. § 34-24-1-1(a)(2), all money and property commonly used as consideration for dealing in illegal substances may be seized. In our previous Opinion in

this case, we noted that at the summary judgment stage, the State presented no witnesses and introduced no exhibits to show any connection between Ivy's money and drug dealing. *Ivy*, 847 N.E.2d at 967. However, at the hearing upon remand, the record reveals that Detective Jeremy Rainey (Detective Rainey) testified that on December 30, 2000 he stopped a taxicab believed to have been involved in a hit-and-run accident, and in which Ivy was a passenger. As Ivy's arrest was underway for falsely identifying himself, Detective Rainey observed an assisting officer search Ivy and recover $2,800 from Ivy's back left pocket. The money was separated into three bundles -- $1,000, $1,000, and $800 -- and held together with a hair tie. Detective Rainey also testified that officers found a shoebox smelling of marijuana, as well as a set of scales, in the backseat of the taxi where Ivy had been sitting. According to Detective Rainey's testimony, Ivy claimed ownership of the scales. Furthermore, Detective Rainey informed the trial court that during the stop and arrest, Ivy's cell phone rang several times.

To counter, Ivy testified that the money found on him that day was several months' worth of Social Security disability income that he had been saving. After the close of the evidence, the trial court commented that while it liked Ivy and would like to rule in his favor, it ultimately could not do so. Specifically, the trial court cited the number of calls to Ivy's cell phone, the manner in which the money was wrapped, the scales, the smell of marijuana, and Ivy's lying about his identity to support its determination that the State had shown by a preponderance of the evidence that the money found on Ivy that day was linked to drug dealing. Consequently, in light of our inability to reweigh the evidence or judge the credibility of witnesses' testimony, we

must affirm the trial court's ruling that the money confiscated from Ivy on December 30, 2000 was subject to seizure under I.C. § 34-24-1-1.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err in issuing its Order of Forfeiture.

Affirmed.

NAJAM, J., and BARNES, J., concur.